NO. 44818-II
IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

Richard Colf,

Appellant,

vs.

Clark County, Washington,

Respondent,

APPEAL FROM THE SUPERIOR COURT

HONORABLE DAVID E. GREGERSON

REPLY BRIEF

BEN SHAFTON
Attorney for Defendant/Appellant
Caron, Colven, Robison & Shafton
900 Washington Street, Suite 1000
Vancouver, WA 98660
(360) 699-3001

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INTRODUCTION

This brief will meet the arguments that respondent Clark County has made. It will minimize reiteration or repetition of points made in the Brief of Appellant. Matters covered sufficiently in the Brief of Appellant will not be repeated.

DISCUSSION

I. The Permit for the Second Manufactured Home Was Valid.

Clark County hints that the permit for the installation of the second manufactured home never became effective because the second manufactured home was not inspected after it was first installed on the property. That assertion is simply incorrect. The documents show that the permit was approved and issued on May 5, 1993. (CP 158, 185) The Hearings Examiner did not find otherwise. He did recite that Clark County personnel testified that the permit "lapsed and expired on November 5, 1993, because (she) failed to have the manufactured home inspected." (CP 23) His finding is different. He stated:

> . . .the second manufactured home was placed on the Property as a temporary dwelling pursuant to former CCC 18.413. The temporary permit, by its stated terms and the plain language of former CCC 18.413.030(C) was only valid for two years unless renewed. The temporary permit was not renewed. The permit expressly states that it expired on May 5, 1994. . .

(CP 28) This finding was based on substantial evidence — the permit itself and the ordinance then in effect.

Conversely, any suggestion that the permit somehow lapsed earlier due to the absence of an inspection is not supported by any substantial evidence. It is contrary to the language of the permit. Moreover, there is nothing in former CCC 18.413 that requires any post-installation inspection as a condition of the validation of the permit. (CP 95-96)

In short, Rachel Lingafelt installed the manufactured home pursuant to a valid hardship permit. No other conclusion is possible.

II. The Court Need Not Defer to Clark County's Interpretation of Its Ordinances.

Clark County insists that its interpretation of its ordinances is subject to deference. That is not the case when the language of the ordinance is plain and unambiguous. The plain meaning of an unambiguous ordinance controls. Also, a Court does not defer to an interpretation that conflicts with that plain language. (Appellant's Opening Brief, p. 6)

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The cases that Clark County cites do not detract from this rule. None state that a Court must defer to a local agency's view of an unambiguous ordinance.[1]

Clark County has cited other cases arising under the Administrative Procedures Act to support its argument. They are inapposite since they involve another statute and specifically do not contain language requiring such deference "as is due" as is seen in RCW 36.70C.130(1)(b). In any event, the opinions cited confirm that the Court is not bound by an agency's interpretation of a statute while it might be obliged to give deference to the agency's interpretation. *City of Redmond v. Central Puget Sound Growth Management Hearings Board*, 136 Wn.2d 38, 46, 959 P.2d 1091 (1998). Furthermore, deference is only warranted when the statute or ordinance has some ambiguity. See e.g., *Port of Seattle v. Pollution Control Hearings Board*, 151 Wn.2d 568, 593, 90 P.3d 659 (2004).

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[1] *Schofield v. Spokane County*, 96 Wn.App. 581, 586-587, 980 P.2d 277 (1999) — The Court would defer to a local agency's determination concerning sewage system requirements based upon language in the Comprehensive Plan and also notes that it must defer to the factual findings made and all inferences made; *Citizens to Preserve Pioneer Park, LLC v. City of Mercer Island*, 106 Wn.App. 461, 475, 24 P.3d 1079 (2001) — Deference is allowed when a local ordinance is ambiguous; *Families of Manito v. City of Spokane*, 172 Wn.App. 727, 740-741, 291 P.3d 930 (2013) — Deference would be given to the local agency's finding that what amounted to a church's main assembly hall for the purpose of determining how many parking spaces the church could have when the factual determinations were supported by substantial evidence; *Chinn v. City of Spokane*, 173 Wn.App. 89, 95, 293 P.3d 401 (2013) — the Court reviews *de novo* claims that a local agency erred in interpreting its own ordinance.

Clark County has not pointed out any ambiguity in the ordinances in question, CCC 14.32A.130(3), (4), and CCC 14.32A.140(4). Therefore, no deference is warranted.

III. The Plain Meaning of the Ordinances in Question shows that Mr. Colf Is Not Guilty of Any Violation.

a. The Ordinances.

To provide context, the relevant ordinances are set out once again:

CCC 14.32A.130(3) and (4):

> This chapter is not retroactive. All manufactured homes installed in Clark County before the date of (the) ordinance codified in this chapter which do not comply with the requirements set forth in this chapter are deemed to be nonconforming. Nonconforming manufactured homes will be allowed to remain at their existing locations without complying with placement standards enumerated herein subject to the provisions of subsection 4 below.
>
> (4) Each person proposing to move a manufactured home, including a nonconforming manufactured home, to a new location including a new location on the same lot, if site putting locations would be different from the original location, it must first obtain a placement permit. All such manufactured homes should be made to comply with all requirements of this chapter prior to their establishment, occupancy, or use on the new site.

CCC 14.32A.140(4):

> The following are exempt from requirements of this chapter:
>
> (4) Manufactured homes legally installed, placed, or existing prior to the effective date of this chapter as described in Section 14.32A.130(3) and above.

The former ordinance defines nonconforming manufactured homes and states that they need not be moved. The latter sets out exemptions from the requirements of CCC 14.32A, including the requirement that there be only one manufactured home per lot—the requirement that is at the heart of this dispute. (Appellant's Opening Brief, pps. 9-10)

b. The Second Manufactured Home Was Legally Installed and Legally Placed.

If the language in CCC 14.32A.140(4) qualifies the language of CCC 14.32A.130(3), as the Hearings Examiner suggested, Mr. Colf is not required to move the second manufactured home on his property if that second manufactured home was either legally installed or legally placed or legally existing prior to October of 2003, the effective date of CCC 14.32A. (Appellant's Opening Brief, pps. 10-11)

Clark County appears to claim that the manufactured home was not "legally placed" or "legally installed" because the hardship permit that Rachel Lingafelt obtained ultimately expired. That argument is

inconsistent with the plain meaning of the words "install" and "place." The definition of "install" is "to place in position or connect for service or use." The verb "place" means "to set in a particular place, position, situation, or relation. The adjective "legally" means "permitted by law." *Random House Dictionary* (2013) The word "legally" when used as an adverb should have the same meaning. The second manufactured home was "installed" and "placed" in 1993. The "installation" and "placement" was done "legally" because Ms. Lingafelt had a permit that allowed placement of the second manufactured home on the property. The fact that the permit may have later expired does not detract in any way from the conclusion that the second manufactured home was both legally placed and installed. Clark County's ordinances do not state that a manufactured home is not legally installed or legally placed if the permit for doing so in the first instance later expires.

c. The Second Manufactured Home is a Valid Nonconforming Use or Structure.

Clark County argues that the second manufactured home cannot stay where it is under the terms of CCC 14.32A.130(3) because it is not a legal nonconforming use, citing *King County Department of Development and Environmental Services v. King County*, _____ P.3d _____, 2013 WL 3377420 (June 27, 2013). In that case, the Court

considered whether a certain use amounted to a nonconforming use under the terms of King County's ordinances. It is relevant here only to demonstrate that whether a certain use can remain as a nonconforming use is governed by existing county ordinances. (¶11)[2]

The ordinance in question, CCC 14.32A.130(3), defines the second manufactured home as nonconforming because it was installed prior to the effective date of CCC 14.32A. CCC 14.32A.130(3). Therefore, it is a nonconforming use under the terms of the ordinance and need not be moved. Under the terms of that ordinance, the installation need not be "legal" since that term is not contained in that ordinance. If the language of CCC 14.32A.140(4) qualifies CCC 14.32A.130(3) to require the installation to be "legal," the second manufactured home is still nonconforming because it was legally installed under the authority of the permit given to Ms. Lingafelt. Therefore, the presence of the second

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[2] Interestingly, the Court saw no need to defer to the hearing examiner's interpretation of the ordinances in question and upheld the Superior Court's reversal of the hearing examiner's decision.

manufactured home on Mr. Colf's property represents a nonconforming use, and it does not have to be moved under the terms of CCC 14.32A.130(3).[3]

CONCLUSION

Clark County's arguments are not correct. The trial court erred in upholding the decision of the Hearings Examiner. The Court should reverse the decision of the trial court and order that the citation Clark County issued to Mr. Colf be reversed with direction to dismiss.

RESPECTFULLY SUBMITTED this 27 day of August, 2013.

BEN SHAFTON, WSB #6280
Of Attorneys for Richard Colf

[3] The second manufactured home is also a lawful nonconforming use under Clark County's general nonconforming use ordinance, CCC 40.530.010. (Brief of Appellant, pps. 14-15)

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Attorney for Defendant/Appellant
Caron, Colven, Robison & Shafton
900 Washington Street, Suite 1000
Vancouver, WA 98660
(360) 699-3001

STATE OF WASHINGTON)
) ss.
County of Clark)

THE UNDERSIGNED, being first duly sworn, does hereby depose and state:

1. My name is LORRIE VAUGHN. I am a citizen of the United States, over the age of eighteen (18) years, a resident of the State of Washington, and am not a party to this action.

2. On August 28, 2013, I deposited in the mails of the United States of America, first class mail with postage prepaid, a copy of the REPLY BRIEF to the following person(s):

Mr. Lawrence Watters
Prosecuting Attorney's Office
PO Box 5000
Vancouver, WA 98666-5000

I SWEAR UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF.

DATED this _____ day of _____, 2013.

_____
LORRIE VAUGHN

SIGNED AND SWORN to before me this 28 day of August, 2013.

_____
NOTARY PUBLIC FOR WASHINGTON
My appointment expires:_____